

**REMARKS**

Favorable reconsideration of this application is requested in view of the foregoing amendments and the following remarks. Claims 1-4 and 28-30 are pending in this application. Claims 5-27 were previously canceled without prejudice or disclaimer.

Support for amending independent claims 1 and 28 to require that hours of additional usage monitoring heating ventilation and air conditioning control system usage for each of the plurality of system users is accrued in the on board memory of the programmable digital thermostat according to each user's personal identification number is found in the paragraph bridging pages 6-7 of the specification as originally filed.

At page 2 of the Office Action dated May 12, 2005, the Examiner cites column 8, lines 28-64 of Berstis and figures 14-20 of Berstis. Column 8, lines 28-64 of Berstis describes maintenance logs and driving logs. However, Applicant has now amended both of the independent claims to require wherein hours of additional usage monitoring heating ventilation and air conditioning control system usage for each of the plurality of system users is accrued in the on board memory of the programmable digital thermostat according to each user's personal identification number. As recited in the pending claims, the terms accrued and accruing mean by way of increase or addition. Berstis does not disclose or suggest that hours of additional usage monitoring heating ventilation and air conditioning control system usage be accrued.

At pages 2-3 of the Office Action, the Examiner takes the position that "a recitation of an intended use of the claimed invention must result in a structural difference to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim." However, this entire line of reasoning applies only to apparatus claims where such a resulting structure difference is the basis for

patentability. All of the pending claims of this application are method claims. The examiner has no legal or logical basis for characterizing the positively recited limitations of the pending method claims as intended uses.

At page 3 of the Action, the Examiner takes the position that "Berstis shows the ability to provide all functions of the current invention and thus meets the claim." However, Berstis does not disclose or suggest the presently claimed limitation of wherein hours of additional usage monitoring heating ventilation and air conditioning control system usage for each of the plurality of system users is accrued in the on board memory of the programmable digital thermostat according to each user's personal identification number. The claimed limitations of accruing and accrued mean to come by way of increase or addition.

At page 3 of the Action, the Examiner comments on claim 3. However, Applicant has now deleted the term "can" from claim 3 to explicitly require the recited elements.

Claims 1-4 were rejected under 35 USC 102(e) as anticipated by U.S. Patent No. 6,198,996 to Berstis.

However, as noted above, Berstis does not disclose or suggest the presently claimed limitation of wherein hours of additional usage monitoring heating ventilation and air conditioning control system usage for each of the plurality of system users is accrued in the on board memory of the programmable digital thermostat according to each user's personal identification number. Again, the claimed limitations of accruing and accrued mean to come by way of increase or addition.

Accordingly, withdrawal of this rejection is respectfully requested.

Claims 28-30 stand rejected under 35 USC 103 as obvious over U.S. Patent No. 6,198,996 to Berstis.

The presently claimed invention is not disclosed or suggested by Berstis because the Berstis reference does not describe or teach the presently claimed limitation of wherein hours of additional usage monitoring heating ventilation and air conditioning control system usage for each of the plurality of system users is accrued in the on board memory of the programmable digital thermostat according to each user's personal identification number.

Accordingly, withdrawal of this rejection is respectfully requested.

Other than as explicitly set forth above, this reply does not include acquiescence to statements, assertions, assumptions, conclusions, or combination thereof in the Office Action. In view of the above, all the claims are considered patentable and allowance of all the claims is respectfully requested. The Examiner is invited to telephone the undersigned (at direct line 512-394-0118) for prompt action in the event any issues remain that prevent the allowance of any pending claims.

The Director of the U.S. Patent and Trademark Office is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-3204 of John Bruckner PC.

Respectfully submitted,

  
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